

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JOHNNY R. CORDREY, # N-81774,

Plaintiff,

vs.

RICHARD HARRINGTON, *et al.*,

Defendants.

Case No. 13-cv-1267-MJR

MEMORANDUM AND ORDER

REAGAN, District Judge:

This matter is before the Court for case management. On December 30, 2013, this Court denied Plaintiff's application to proceed *in forma pauperis* ("IFP") in this case, and ordered him to pay the \$400.00 filing fee for this case no later than January 21, 2014 (Doc. 10). Plaintiff has "struck out" under 28 U.S.C. § 1915(g). Plaintiff was reminded of his payment deadline when the Court denied his motion to amend judgment regarding the denial of IFP status (Doc. 12). Plaintiff was clearly warned in both Orders that failure to pay the filing fee would result in dismissal of this case.

The Court notes that on January 22, 2014, Plaintiff filed several additional exhibits (Doc. 15), consisting of a disciplinary report dated Oct. 23, 2013; the adjustment committee's report finding Plaintiff guilty of two infractions; Plaintiff's grievance over the matter and the response denying his grievance; and a copy of this Court's order at Doc. 10. None of this material suggests that this Court erred in its assessment that Plaintiff is not under imminent danger of serious physical injury.

The date to pay the filing fee has passed, and Plaintiff has failed to pay. As a result, this action is **DISMISSED** without prejudice, for failure to comply with an Order of this Court. FED. R. CIV. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994).

This dismissal shall not count as a “strike” under 28 U.S.C. § 1915(g). Plaintiff’s obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$400.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

To that end, the agency having custody of the Plaintiff is **DIRECTED** to remit the \$400.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$400.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, Plaintiff shall make monthly payments of 20% of the preceding month’s income credited to Plaintiff’s prison trust fund account until the \$400.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from the Plaintiff’s trust fund account to the Clerk of this Court each time the Plaintiff’s account exceeds \$10.00, until the \$400.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202.

The Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at the Menard Correctional Center upon entry of this Order.

The Clerk shall **CLOSE THIS CASE** and enter judgment accordingly.

IT IS SO ORDERED.

DATED: February 4, 2014

s/ MICHAEL J. REAGAN
United States District Judge